

**Final**

**USFWS REGION 3 FEDERAL AID OFFICE**

**GENERIC ENVIRONMENTAL ASSESSMENT**

A Streamlined Method for Approving Minor Encroachments into and  
Divestitures of Minor Amounts of State Lands Acquired with  
Federal Aid Funds

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## **Final**

### **USFWS Region 3 Federal Aid Office Generic Environmental Assessment**

#### **A Streamlined Method for Approving Minor Encroachments into and Divestitures of Minor Amounts of State Lands Acquired with Federal Aid Funds**

## **Chapter 1 Purpose and Need for Proposed Action**

### **1.1 Purpose**

This Generic Environmental Assessment (EA) has been prepared to allow the U. S. Fish and Wildlife Service (USFWS) to approve encroachments into and divestitures of Federal Aid lands<sup>1</sup> when the conditions in this document are fully met. The actions (land transactions) to be considered are minor encroachments that require an easement, lease, or license to be issued by the States and minor divestitures (exchange/trade/or sale) when these actions may not qualify for approval under existing categorical exclusions. The encroachments and divestitures must serve other public needs or uses such as new or improved roads and bridges, airport expansions, and pipelines and other utility lines. These proposed land uses are usually sought by privately owned utilities or third party public agencies (as opposed to the State fish and wildlife resource agencies) for projects that are usually not intended to benefit the fish and wildlife resources on these lands or considered to be compatible with the purposes for which these State lands were acquired. Exchanges, trades, or sales of minor amounts of Federal Aid lands may also be used to correct land boundary problems with adjacent public and private landowners.

Only those proposed encroachments and divestitures that are recommended by the State fish and wildlife agencies for Federal Aid approval and that meet the purposes, acreage limits, and other conditions set forth in Alternative B (Section 2.2.2) below will be considered by the USFWS for approval through the abbreviated review process set forth in this Generic EA. For any action determined by the USFWS (through review of the site-specific documentation) to meet all the conditions in Section 2.2.2 below, approval of the action by the USFWS under this Generic EA would satisfy the requirements of the National Environmental Policy Act (NEPA) and preparation of an individual, site-specific EA would not be required. However, compliance of a land transaction proposal with the conditions set forth in Alternative B does not obligate the USFWS to approve the proposed transaction. The USFWS retains the right to deny any requested land transaction or to require that an individual, site-specific EA be prepared.

### **1.2 Need**

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<sup>1</sup> Federal Aid lands are lands that have been acquired by State fish and wildlife agencies with funds from any grant program administered by the USFWS, Division of Federal Aid.

There is a need for some private utilities and third party public agencies to occasionally expand and/or relocate their facilities (roads, utilities, etc.) in a manner where the use of minor amounts of lands acquired with Federal Aid grant funds cannot reasonably be avoided and the use is considered to be in the public interest. There may also be a need to occasionally correct a land boundary problem with an adjacent public or private landowner.

There is a need by the USFWS (Region 3 Federal Aid Office) to process these types of proposed minor encroachments and divestitures of State-owned Federal Aid lands in a more efficient manner so that the preparation of an individual EA is not required for every proposed land transaction that may not qualify for approval under an existing categorical exclusion.

Before approving any of these proposed land encroachments or divestitures, the USFWS needs to ensure that there are no feasible and prudent alternatives to avoid the Federal Aid lands, that the adverse impacts caused to these Federal Aid lands will be minimized to the extent possible, and that any unavoidable adverse impacts to fish and wildlife, fish and wildlife habitat, or public water-access sites will be fully compensated for.

In evaluating whether there are feasible and prudent alternatives to a proposed project that would avoid the Federal Aid lands, the State fish and wildlife agency and the USFWS will consider the extent, location, and nature of the proposed impacts to these lands in comparison to the possible increased project costs; social, economic, and environmental impacts; and community disruption associated with alternatives that would avoid the Federal Aid lands.

### **1.3 Decisions that Need to be Made**

The Regional Director for Region 3 of the USFWS will determine, based on the facts and recommendations contained herein, whether this Regional Generic EA is adequate to support a finding of no significant impact (FONSI) if the proposed action (approval of minor encroachments or divestitures of Federal Aid land through utilization of the abbreviated review process set forth in Alternative B of this Generic EA) is selected. If the Regional Director determines that the proposed action may or will have a significant impact on the human environment, either individually or cumulatively, the USFWS will continue to require the preparation of a site-specific EA for each proposed encroachment or divestiture of Federal Aid land that may not qualify for approval under an existing categorical exclusion.

### **1.4 Background**

As of 1997, a total of approximately 1,720,000 acres of land have been acquired with Federal Aid grant funds by the state fish and game agencies within the eight States (IA, IL, IN, MI, MN, MO, OH and WI) in Region 3. The majority of these lands are being managed to provide habitat for fish and wildlife and various forms of wildlife-dependent recreation for the public. States have also acquired thousands of smaller sites within the Region to provide public access to lakes and streams for anglers and boaters.

Each year, the Region 3 Federal Aid Office receives a number of requests for minor land encroachments and divestitures for such things as roads, utilities, and other similar facilities on these State lands that have been acquired with Federal Aid grant funds. Some of these requests cannot be approved under the existing categorical exclusions that address land transactions (516 DM 6, Appendix 1, Section 1.4A(4)) and utility rights-of-way (516 DM 6, Appendix 1, Section 1.4C(4)). As such, the USFWS has been requiring that site-specific EAs be prepared for some of these proposed projects. Preparation, review, and processing of these site-specific EAs can be very time consuming.

It has been the practice of the USFWS, Region 3 Federal Aid Office, to consider reasonable requests to use minor amounts of Federal Aid land for public use benefits. We expect to continue this practice as we do not think that these lands should be perceived as insurmountable barriers to other legitimate public needs. Our intent in developing this Generic EA is to allow the USFWS to approve some of these proposed land transactions in the future in a more efficient manner when they meet the conditions outlined in Section 2.2.2 of this EA and would not unduly impact the Federal Aid interest in these lands.

## **1.5 Applicability**

Utilization of this Generic EA by the USFWS (Federal Aid Office, Region 3) to approve minor encroachments and divestitures of Federal Aid lands or to correct land boundary problems is limited to **only** those proposed land transactions that meet **all** of the conditions stated in Alternative B.

## **Chapter 2 Alternatives, Including the Proposed Action**

### **2.1 Alternatives Considered But Not Carried Forward for Detailed Analysis**

**2.1.1 Development of new categorical exclusions** to supplement the existing categorical exclusions that can be utilized to approve certain types of minor land transactions was considered. However, this alternative was not analyzed in detail because the development and promulgation of categorical exclusions exceeds the legal authorities of the region, and the required rulemaking at the national level can be a very lengthy process. In addition, the conditions for use of any new categorical exclusions would most likely be very similar to those in Alternative B below.

### **2.2 Alternatives Carried Forward for Detailed Analysis**

#### **2.2.1 Alternative A (Denial of Proposed Land Transaction)**

This alternative will be implemented by the USFWS if the Regional Director, in consultation with the appropriate State fish and wildlife agency, determines that the applicant will not be allowed to utilize Federal Aid lands and denies the requested land transaction. The USFWS retains the right to deny any request for land divestiture or encroachment for other public needs if it determines that such denial is in the best interest of fish and wildlife resources. Under this alternative, the

applicant requesting use of these State lands would need to utilize an alternate design that would avoid these State lands.

## **2.2.2 Alternative B (Use of Abbreviated Review Process - Proposed Action)**

This alternative will be implemented by the USFWS if the Regional Director, in consultation with the appropriate State fish and wildlife agency, approves the proposed minor land transaction under the conditions spelled out below.

Under this alternative, the Region 3 Federal Aid Office of the USFWS would be responsible for reviewing each individual proposed land transaction to ensure that all of the following conditions have been met:

1. The proposed land transaction may not qualify for approval under an existing categorical exclusion, or the State fish and wildlife agency prefers to have the proposed land transaction processed under the Generic EA ;
2. The land transaction is:
  - a) being proposed by a privately owned utility or a third party public agency (not the State fish and wildlife resource agency) for facilities to serve a public need or use (such as an airport expansion, a new or improved road or bridge, or pipeline or other utility line) rather than to benefit fish and wildlife resources or
  - b) being proposed to correct a land boundary problem with an adjacent public or private landowner;
3. The total amount of Federal Aid land to be exchanged, traded, or sold, or that requires an easement, lease, or license does not exceed the values in the following table:<sup>2</sup>

### Total Size of State Area Maximum Size of Land Transaction

Less than 300 acres	3 acres
300 to 1000 acres	1 percent of area
more than 1000 acres	1 percent of area not to exceed 25 acres

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<sup>2</sup> The sliding-scale system used in this table is loosely based on a table in criteria #3 from the Programmatic Section 4(f) Evaluation, dated December 23, 1986, that was prepared by the Federal Highway Administration for Federally-aided highway projects that have minor involvements with public parks, recreation lands, and wildlife and waterfowl refuges. **Note:** for the purpose of approval under the Generic EA, the acreage of areas under temporary easement needed for access and construction will generally not be included in calculating the size of the allowable land transaction unless the restoration of these areas to a desired pre-use condition is expected to take a number of years.

4. There is no feasible and prudent alternative that would avoid the Federal Aid lands and the project plan includes all feasible and prudent measures to minimize the encroachment into and impacts to these State lands.[The applicant should coordinate with the State fish and wildlife agency during the development of supporting documentation demonstrating that alternatives to avoid and minimize impacts have been adequately considered. The documentation need not be voluminous but should adequately discuss the factors (such as possible increased project costs; social, economic, and environmental impacts; or community disruption) considered for each alternative in reaching the determination that there is no feasible and prudent alternative to the proposed action that could minimize, or avoid altogether, encroachment on the State lands.];
5. The direct and indirect adverse impacts of the proposed action on Federal Aid lands would be minor or temporary. [In addition to describing the unavoidable direct impacts of the proposed action on Federal Aid lands, the applicant's supporting documents should also describe any possible proximity impacts (such as increased noise, visual intrusion, air and water pollution, introduction of invasive species, other wildlife and habitat effects, and/or other impacts deemed relevant) that could affect use of the Federal Aid lands in the vicinity of the proposed action. Impacts associated with the operation and use of the proposed facility, as well as temporary construction impacts, should be described and discussed. The USFWS will consider the nature and duration of the proposed project's direct and indirect impacts in determining whether approval of the project under the Generic EA is appropriate.];
6. The proposed land transaction would not impact any major development with a Federal Aid interest (such as buildings, shooting ranges, other constructed facilities, etc.);
7. The land transaction proposal includes a commitment by the applicant to a) provide the State fish and wildlife agency with replacement lands of at least equal or greater monetary **and** fish and wildlife value or b) repay the State a sum sufficient to purchase replacement lands of at least equal or greater monetary value **and** adequate to ensure that the fish and wildlife values of the lands directly and indirectly impacted by the project are fully replaced. [The State would be responsible for crediting these reimbursement funds to the appropriate Federal Aid Program for later use in purchasing lands. States are encouraged to require additional mitigation and compensation measures to protect the purpose(s) for which these lands were acquired];
8. The proposed land transaction would:
  - a. Not adversely affect Federally listed, proposed or candidate species, and/or designated or proposed critical habitat;
  - b. Not affect historic nor adversely affect other cultural resources;
  - c. Not have meaningful adverse impacts to wetlands;
  - d. Not have meaningful adverse impacts to floodplains;
9. Substantial public opposition and/or controversy regarding the proposed land transaction does not exist. The state and/or applicant has informed the public regarding the proposal



and given them an opportunity to provide comments in accordance with the summarized state processes as presented in Attachment 3. Depending on the nature and scope of the proposal, various public information techniques may be used. This could include newspaper notices, environmental newsletters, postings at public buildings and web sites, contacting other units of government, contacting affected and adjacent landowners, individual mailings to potential affected parties and public meetings. Copies of comments should be provided to the USFWS if there is any question of whether such comments constitute “substantial” opposition or controversy. Concerns that surface during the public notification process are generally related to the “need” for the proposed land transaction and not the effects the proposal may have on the environment. If issues cannot be resolved, and opposition or controversy is substantial, the proposal would be dropped or delayed until a site-specific Environmental Assessment is completed;

10. Consistent with the NEPA regulations in 40 CFR 1500.4(i), 1502.20, and 1508.28 (see Attachment 1), a written site-specific review has been provided by the State to the USFWS for the proposed land transaction. This written review addresses each of the issues listed in conditions 1 through 9 above and specifies the status of each issue and whether the site-specific situation “triggers” the need for additional review or consultation with the USFWS on whether a full site-specific EA is necessary. [The State’s site-specific review documentation may be provided in tabular form as indicated in the example in Attachment 2, with supporting documentation (e.g., project maps, applicant’s proposal, alternatives analysis per condition #4 above, analysis of impacts per condition #5 above, and proposed compensation per condition #7 above) attached. The USFWS reserves the right to request any additional information from the State and/or applicant that may be needed to determine if the proposed land transaction meets the 9 conditions above].

### **2.2.3 Alternative C (Site-specific EA is Needed - No Action)**

This alternative will be implemented by the USFWS if the Regional Director, in consultation with the appropriate State fish and wildlife agency, determines (a) that the proposed land transaction does not meet the 9 conditions specified under Section 2.2.2 and that a site-specific EA needs to be prepared, or (b) that there are other valid reasons for requiring that a site-specific EA be prepared. In such situations, the proposed land transaction would undergo the standard review of a site-specific EA.

## **Chapter 3 Affected Environment**

### **3.1 Physical Environment**

The types of lands that would be affected by these projects would be State lands within the Region 3 States of Iowa, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin that have been acquired with Federal Aid grant funds. As of 1997, approximately 1,720,000 acres of State lands have been acquired in Region 3 with Federal Aid grant funds (Table 1). The majority of these lands are being managed by the various States to provide habitat for fish and wildlife, as well

as various forms of wildlife-dependant recreation for the public. States have also acquired thousands of smaller sites within the Region to provide public water access to lakes and streams for anglers and boaters.

### **3.2 Biological Environment**

As previously stated, the majority of the State lands that would be affected by these proposed land transactions are being managed to provide habitat for fish and wildlife.

These fish and wildlife habitats generally include such land use cover types as grasslands, woodlands, agricultural lands, wetlands, lakes and streams. These cover types provide important habitat for many species of fish and wildlife. Some of these parcels of land also provide essential habitat for Federally listed or proposed threatened and endangered species and may be part of the designated critical habitat for such species. Wildlife commonly found on many of these State areas within the Region include such species as white-tailed deer, wild turkey, red fox, raccoon, cottontail rabbit, mallard and Canada goose, as well as numerous non-game species.

In addition to the above, many of these State lands that have been acquired with Federal Aid grant funds also provide recreational opportunities for the general public such as hunting, fishing, bird watching, nature photography, and various other wildlife-dependant forms of recreation.

### **3.3 Cultural Resources**

A very small percentage of State lands has been sufficiently surveyed to identify the presence of unrecorded archeological sites. Furthermore, most archeological sites as well as other cultural resources such as buildings, structures, and sacred sites have not been evaluated as historic properties (i.e., meet the criteria for the National Register of Historic Places). Most project areas have potential to contain reported and unreported cultural resources.

Table 1

**REGION 3 FEDERAL AID  
CUMULATIVE LAND PURCHASE REPORT<sup>1</sup>**

<b>All Region 3 States</b>	<b>ACRES</b>	<b>FED \$</b>	<b>STATE \$</b>	<b>IN-KIND</b>	<b>TOTAL</b>
<b>No FY Reported</b>	972,845.56	\$60,024,929	\$48,702,925	\$0	\$108,727,854
1940	80.00	\$600	\$200	\$0	\$800
1942	1,434.49	\$16,951	\$5,685	\$0	\$22,636
1943	534.43	\$7,844	\$2,615	\$0	\$10,459
1944	520.00	\$10,050	\$3,350	\$0	\$13,400
1953	1,273.33	\$27,090	\$9,030	\$0	\$36,120
1954	1,647.00	\$4,575	\$1,525	\$0	\$6,100
1955	20.00	\$150	\$50	\$0	\$200
1980	10.26	\$13,350	\$4,450	\$0	\$17,800
1982	272.50	\$363,750	\$121,250	\$0	\$485,000
1983	296.80	\$346,252	\$115,414	\$0	\$461,666
1984	2,352.60	\$989,900	\$281,687	\$0	\$1,271,587
1985	104,582.10	\$4,153,328	\$2,539,425	\$1,985	\$6,694,738
1986	63,373.20	\$7,726,509	\$3,055,604	\$0	\$10,782,113
1987	62,846.15	\$7,560,779	\$2,778,174	\$0	\$10,338,953
1988	54,654.84	\$4,935,018	\$1,615,299	\$0	\$6,550,317
1989	62,034.30	\$4,457,531	\$1,829,356	\$0	\$6,286,887
1990	36,471.56	\$4,248,404	\$1,375,656	\$0	\$5,624,060
1991	64,077.81	\$2,959,529	\$941,565	\$0	\$3,901,094
1992	47,851.26	\$9,076,050	\$2,873,103	\$608,458	\$12,557,611
1993	53,497.91	\$7,363,806	\$2,562,165	\$804,062	\$10,730,033
1994	116,572.53	\$8,725,545	\$4,051,610	\$823,350	\$13,600,505
1995	47,386.64	\$5,142,328	\$2,978,863	\$173,526	\$8,294,717
1996	18,410.61	\$7,028,765	\$1,226,585	\$1,225,216	\$9,480,566
1997	7,026.65	\$3,616,622	\$268,156	\$927,721	\$4,812,499
<b>TOTAL ACRES</b>	<b>1,720,072.53</b>				
<b>TOTAL \$</b>		<b>\$138,799,655</b>	<b>\$77,343,742</b>	<b>\$4,564,318</b>	
<b>GRAND TOTAL \$</b>					<b>\$220,707,715</b>

## **Chapter 4 Environmental Consequences**

### **4.1 Alternative A (Denial of Proposed Land Transaction)**

#### **4.1.1 Habitat Impacts**

If the USFWS's Regional Director ultimately determines that the proposed facility (road, utility line, etc.) does not meet all of the conditions in Section 2.2.2 and denies the proposed land transaction, or for other reasons denies the transaction, the proposed facility would likely be constructed on private property in the vicinity of the State land boundary. If the habitat in the vicinity of the State land is similar to the habitat on the State land, the impacts may be greater than those addressed in Alternative B (Proposed Action) if a longer route/road is required. In addition, it is less likely that the applicant would be required to provide compensatory mitigation to offset habitat impacts. However, if most of the adjacent habitat is in cropland, the impacts would likely be less than with Alternative B.

#### **4.1.2 Biological Impacts**

In addition to possible impacts to fish and wildlife on the lands on which the project is constructed, some fish and wildlife impacts may also occur on Federal Aid lands with this alternative if the proposed facility (road, utility line, etc.) is constructed in close proximity to the boundary of the State land. The USFWS would probably not be in a position to require that the project be designed and constructed in a manner that would mitigate, to the extent possible, the potential fish and wildlife impacts on the project lands or on the adjacent Federal Aid lands.

#### **4.1.3 Listed Species**

It is possible that some Federally listed or proposed threatened or endangered species could be adversely affected by this alternative and/or critical habitat could be adversely modified because the USFWS may not be in a position (if no Federal Aid lands are involved and the proposed facility is not Federally funded or does not need a Federal permit) to require that impacts to listed species or critical habitat be avoided and that the project be constructed in compliance with Section 7 of the Endangered Species Act. However, all entities and individuals are still subject to provisions of the Endangered Species Act (ESA) and to penalties under Section 9 of the ESA. Listed species would still have legal protection on land outside of Federal Aid purview, but the chances of a thorough review or full protection and mitigation are reduced.

#### **4.1.4 Cultural Resources**

Some adverse impacts to cultural resources could also possibly occur due to this alternative because the USFWS may not be in a position (if no Federal Aid lands are involved) to require that impacts to cultural resources be avoided. However, the project would still require consultation with the appropriate State Historic Preservation Officer (SHPO) if the project is Federally funded

or authorized. Some states and local jurisdictions also have their own regulations requiring consultation with the SHPO.

#### 4.1.5 Cumulative Impacts

There could be some cumulative impacts associated with this alternative if the proposed projects that must avoid the Federal Aid lands are not subject to Federal laws and regulations for environmental and historical protection (e.g., NEPA, ESA, Executive Orders 11988 and 11990, and NHPA) or equivalent State or local laws and regulations. There could also be some cumulative impacts in terms of the overall costs of infrastructure, such as roads and utilities, if many of these proposed projects must avoid all Federal Aid lands.

#### 4.1.6 Local Social-Economic Conditions

Many of the infrastructure projects (roads, utility lines, etc.) for which some use of Federal Aid lands may be proposed should be beneficial to the public in the vicinity of these projects. However, the route required to avoid crossing the State lands may be longer and result in increased costs to both the applicant and the public. It is anticipated that impacts to public use activities on the State lands should be minimal unless the proposal involves a new facility (road, utility line, etc.) to be constructed in close proximity to the boundary of the State land.

#### 4.1.7 Environmental Justice

Many of the types of facilities for which some use of Federal Aid lands may be proposed, such as roads and utility lines, should also be beneficial to minorities and low income populations and communities. Denial of a proposed use of Federal Aid lands for such a project has the potential to result in adverse impacts to minority and low income populations and communities if they are located in the vicinity of the route selected to avoid the State lands, particularly if the project would not be subject to Federal, State, or local regulations or policies intended to address such potential impacts.

### **4.2 Alternative B (Use of Abbreviated Review Process - Proposed Action)**

#### 4.2.1 Habitat Impacts

Any infrastructure project (such as a road, utility line, etc.) for which the associated land transaction could be approved under this alternative would likely have at least some minor and temporary impacts on fish and wildlife habitats on the Federal Aid lands. However, the conditions for use of this alternative to approve the transaction ensure that the project is in full compliance with Federal environmental laws and regulations, including Executive Orders 11990 (Protection of Wetlands) and 11988 (Floodplain Management). In addition, for the land transaction to be approved, the project must be designed to minimize impacts to the extent possible, and the project plan must include a commitment by the applicant to provide adequate compensation that would offset any unavoidable adverse impacts to fish and wildlife habitat. This compensation could consist of replacement lands of at least equal or greater monetary and fish and wildlife habitat

value or monetary reimbursement to the State sufficient to purchase such replacement lands. The State would be responsible for crediting these reimbursement funds to the appropriate Federal Aid Program, where they would be available to fund future land purchases that, in time, would replace the fish and wildlife habitat impacted by the approved project.

#### 4.2.2 Biological Impacts

In addition to the impacts to fish and wildlife resulting from the project-related loss of habitat, the construction and use of a facility that could be approved under this alternative might have other adverse impacts on fish and wildlife within the Federal Aid lands. These could include such things as increased traffic noise and disturbance to wildlife, impacts of salt and other runoff materials from roadways, the potential for increased deer collisions with cars, the potential for bird collisions with utility lines, and the potential for increased predation on wildlife by raptors and other birds utilizing towers or power line structures for perching and/or nesting structures in grassland or oldfield habitats. However, all practical measures would be undertaken to minimize these potential project impacts on the fish and wildlife within these areas. Such impacts would also be considered in determining appropriate compensation for the project.

#### 4.2.3 Listed Species

Approval of any project and associated land transaction would be done in full compliance with Section 7 of the Endangered Species Act of 1973. A proposed project could not be approved under this alternative if the construction or use of the proposed facility is likely to adversely affect, either directly or indirectly, any Federally listed, candidate, or proposed threatened or endangered species or result in adverse modification of any designated or proposed critical habitat for such species. For each proposal recommended to the USFWS for approval under this alternative, the State fish and wildlife agency would submit, as part of the supporting documentation, a Federal Aid Section 7 Evaluation Form.

#### 4.2.4 Cultural Resources

The State fish and wildlife agency (not the project applicant) will initiate consultation with the State Historic Preservation Officer as soon as the area(s) of potential effect for the proposed undertaking is determined; and will notify interested Indian tribes where permitted or request the FWS Regional Director to notify the tribes. If the undertaking has the potential to affect a historic property (a cultural resource meeting the criteria for the National Register of Historic Places) as determined through the Section 106 (National Historic Preservation Act) process defined in 36 Code of Federal Regulations Part 800, the fish and game agency will notify the FWS Regional Historic Preservation Officer to complete the Section 106 process.

#### 4.2.5 Cumulative Impacts

Because of the conditions for use included in this alternative, particularly that the applicant must provide sufficient compensatory mitigation to fully offset all direct and indirect project impacts, no more than minor and temporary impacts are expected to occur due to the approval of any

individual proposal. Accordingly, we do not anticipate that the approval of a number of proposals across Federal Aid lands in the states within Region 3 will result in any major adverse cumulative impacts. However, if the cumulative adverse effects due to the projects approved through this generic EA are found to be more substantial than anticipated, we will reevaluate use of the Generic EA to ensure that the Regional Director's Finding Of No Significant Impact (FONSI) would still apply to these types of projects. If it is determined that the FONSI does not apply, use of the generic EA would be discontinued. Past approvals of similar projects and associated land transactions within State lands under site-specific EAs has not resulted in any major adverse cumulative impacts, particularly when conditions of use similar to the 9 conditions listed in Alternative B have been met. Over time, there could even be a net gain in wildlife habitat since many projects would result in a net gain in acreage. There could also be cumulative impacts to applicants such as transportation agencies and some utilities that may have a number of projects over time that involve Federal Aid lands. Being able to approve qualifying projects under the Generic EA should allow the USFWS to process such projects more quickly, resulting in a cumulative savings of time for these applicants.

#### 4.2.6 Local Social-Economic Conditions

Similar to Alternative C (No Action). Almost any infrastructure project (such as a road, utility line, etc.) for which the associated land transaction could be approved under this alternative would likely be beneficial to the public in the vicinity of the proposed project. Although some public use activities (bird watching, hunting, etc.) on some of these State areas could be adversely affected during some periods of the year, these impacts should only be of a minor and temporary nature and would be considered in determining the amount of compensatory mitigation required of the applicant.

#### 4.2.7 Environmental Justice

Similar to Alternative C (No Action). The portion of any project for which the associated land transaction could be approved under this alternative would be unlikely to result in adverse impacts to minority and low income populations and communities since these populations and communities are not located on Federal Aid lands. If such populations or communities are located immediately adjacent to an area of Federal Aid lands on which a project is proposed, the applicant would be required to analyze any potential proximity impacts to ensure that the construction and/or use of the proposed facility would not result in any substantial adverse impact to these populations or communities.

### **4.3 Alternative C (Site-specific EA is Needed - No Action)**

#### 4.3.1 Habitat Impacts

If the USFWS ultimately determines that the proposed action does not meet the conditions specified in Alternative B of this Generic EA and that a site-specific EA needs to be prepared (or for other reasons decides that a site-specific EA needs to be prepared), we believe the habitat impacts should essentially be the same as for Alternative B. Various alternative routes would be

considered to see if the State lands could be avoided and, if unavoidable, a route would be selected which would minimize the habitat impacts to the extent possible. If approved, the land transaction for the project would require that the applicant provide compensatory mitigation to fully offset any unavoidable adverse impacts.

#### 4.3.2 Biological Impacts

The biological impacts associated with approval of a lands transaction under this alternative should also be similar to Alternative B. Various alternative routes would be considered, and if the Federal Aid lands could not be avoided, a route would be selected which would minimize the biological impacts of the proposed project to the extent possible. All unavoidable direct and indirect adverse impacts to fish and wildlife would be considered in determining the amount of compensatory mitigation that would be required of the applicant.

#### 4.3.3 Listed Species

As with Alternative B, a proposed project could not be approved under this alternative if the construction or use of the proposed facility is likely to adversely affect, either directly or indirectly, any Federally listed, candidate, or proposed threatened or endangered species or result in adverse modification of any designated or proposed critical habitat for such species.

#### 4.3.4 Cultural Resources

The State fish and wildlife agency (not the project applicant) will initiate consultation with the State Historic Preservation Officer as soon as the area(s) of potential effect for the proposed undertaking is determined; and will notify interested Indian tribes where permitted or request the FWS Regional Director to notify the tribes. If the undertaking has the potential to affect a historic property (a cultural resource meeting the criteria for the National Register of Historic Places) as determined through the Section 106 (National Historic Preservation Act) process defined in 36 Code of Federal Regulations Part 800, the fish and game agency will notify the FWS Regional Historic Preservation Officer to complete the Section 106 process.

#### 4.3.5 Cumulative Impacts

We believe that the cumulative impacts of this alternative over time could be somewhat greater than for Alternative B, because those projects with the potential for more severe impacts would be considered for approval under site-specific EAs. Even with good compensatory mitigation, the larger projects that could be approved under this alternative may have some impacts that are not fully offset. A negative cumulative impact of doing continued site-specific EAs would be a decreased amount of both USFWS and State staff time available for doing more productive activities for fish and wildlife.

#### 4.3.6 Local Social-Economic Conditions



We anticipate that almost any proposed new infrastructure facility (such as a road, utility line, etc.) for which the associated land transaction could be approved under this alternative would likely be beneficial to the public in the vicinity of the project. We also believe that the costs to the public and the applicant in most instances would be reduced compared to alternative A, but slightly higher than Alternative B, because of the additional time required to develop a site-specific EA. Although some public use activities on some State areas could be affected during some periods of the year, these impacts should be offset, for the most part, by the compensatory mitigation that would be required of the applicant.

#### 4.3.7 Environmental Justice

Similar to Alternative B.

#### 4.4 Summary of Environmental Consequences by Alternative (Table 2)

	<b>Denial of Proposed Land Transaction (Alternative A)</b>	<b>Use of Abbreviated Review Process -Proposed Action (Alternative B)</b>	<b>Site-specific EA Needed - No Action (Alternative C)</b>
<b>Habitat Impacts</b>	Since the proposed action would be denied, no adverse habitat impacts would occur on Federal Aid lands. However, some adverse impacts could be expected on nearby lands.	Some minor and temporary construction impacts to habitat on Federal Aid lands.	This would essentially be the same as Alternative B.
<b>Biological Impacts</b>	Some minor and temporary adverse affects on some species of fish and wildlife, but potentially more impacts than with Alternative B.	Some minor and temporary adverse affects on some species of fish and wildlife.	This would essentially be the same as Alternative B.
<b>Listed Species</b>	No adverse impact on Federal Aid lands, but possibly could adversely affect some Federally listed or proposed T or E species or their designated Critical Habitat on nearby lands because there would be less USFWS oversight and the proposed route may be longer.	Not likely to adversely affect any Federally listed or proposed T or E species or their designated Critical Habitat.	This would essentially be the same as Alternative B.
<b>Cultural Resources</b>	No negative impact to cultural resources on Federal Aid lands, because the proposed action would be denied. This could cause some adverse impacts to such resources on nearby lands depending upon where the alternative route was located.	No historic properties would be affected.	Historic properties could be affected, but impacts would be considered through the Section 106 process and mitigated by the FWS when impacts could occur.

	<b>Denial of Proposed Land Transaction (Alternative A)</b>	<b>Use of Abbreviated Review Process -Proposed Action (Alternative B)</b>	<b>Site-specific EA Needed - No Action (Alternative C)</b>
<b>Cumulative Impacts</b>	Possibly could be some if these projects are not designed and constructed in an environmentally sound manner and in compliance with NEPA, ESA, NHPA, E.O.11988 and/or E.O.11990.	Because of the minor or temporary nature of these projects and the required compensatory mitigation, we anticipate that the cumulative impacts would be minimal.	The cumulative impacts of this alternative over time could be somewhat greater than for Alternative B.
<b>Local Socio- Economic Conditions</b>	A negative impact of denying access through Federal Aid land is that routes may be longer and increase the costs for both the public and the applicant.	The costs to the public and the applicant in most instances would be reduced compared to Alternative A.	The costs to the public and the applicant in most instances would be reduced compared to Alternative A, but slightly higher than alternative B.
<b>Environmental Justice</b>	Because these facilities would be routed and constructed on private lands, some of these projects potentially could have an adverse affect on some minority or low income populations and communities.	We anticipate that these types of public facilities should be beneficial to minorities and low income populations and communities and not have any adverse affects.	Same as Alternative B.

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## **Chapter 6 Consultation and Coordination with the Public and Others**

This EA has been prepared in consultation with the State fish and wildlife agencies in the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.

## **Chapter 7 Public Comment on Draft EA and Response**

Notice of the draft EA was distributed to all media in the Region for a 30 day public review period along with distribution to other interested Regional and national groups and no comments were received.

## **Attachments**

### **Attachment 1. Federal Regulations 40 CFR 1500.4(i), 1502.20, 1508.28, and 550 FW 2.2(A)(2)(d)**

#### **1500.4 Reducing Paperwork**

Agencies shall reduce excessive paperwork by:

- (a) Reducing the length of environmental impact statements (SS 1502.2(c)), by means such as setting appropriate page limits (SS 1501.7(b)(1) and 1502.7).
- (b) Preparing analytic rather than encyclopedic environmental impact statements (SS 1502.2(a)).
- (c) Discussing only briefly issues other than significant ones (SS 1502.2(b)).
- (d) Writing environmental impact statements in plain language (SS 1502.8).
- (e) Following a clear format for environmental impact statements (SS 1502.10).
- (f) Emphasizing the portions of the environmental impact statement that are useful to decision makers and the public (SS 1502.14 and 1502.15) and reducing emphasis on background material (SS 1502.16).
- (g) Using the scoping process, not only to identify significant environment issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (SS 1501.7).
- (h) Summarizing the environmental impact statement (SS 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (SS 1502.19).
- (i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (SS 1502.4 and 1502.20).
- (j) Incorporating by reference (SS 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (SS 1502.25).

(I) Requiring comments to be as specific as possible (85 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (SS 1503.4(c)).

## **1502.20 Tiering**

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (SS 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site-specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Sec. 1508.28).

## **1508.28**

### **Sec. 1508.28 Tiering.**

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

In addition to the CEQ references above, the Service has draft policy that is currently in the signature process modifying Service NEPA procedures. This policy will state in 550 FW 2.2(A) (2)(d):

(d) **Programmatic Document.** 40 CFR 1500.4(I) and 1502.20. A programmatic EIS or EA addresses a group of similar or related actions as a whole, rather than one at a time in separate EISs or EAs. A programmatic document can be an effective means for addressing broad cumulative issues and impacts. These documents can address a group of different actions occurring in the same place, or a single action occurring in many different places. Addressing programs, policies, or plans of broad scope, rather than those of narrow scope, can eliminate repetitive discussions of the same issues. Programmatic NEPA documents do not relieve us of our responsibility to prepare site-specific NEPA documents.

**Attachment 2a.                      Standard Site-specific Review Form** (see Section 2.2.2.10 of Generic EA)

**State:**    **State Area (Federal Aid Lands) Affected:**

**Grant or Transaction Number For the Area:**

**Name of Proposed Project/Facility:**

**Transaction Type (check or circle one):**    ☐ Easement    ☐ Lease    ☐ License    ☐ Exchange    ☐ Trade    ☐ Sale

**Compliance of the Proposed Land Transaction with the Generic EA Conditions** (*provide a brief summary of the site-specific status of the proposal and answer yes or no for each of the conditions outlined in the table below*):

<b>Generic EA - Abbreviated Review Process Conditions for Use</b>	<b>Site-Specific Status</b>	<b>Complies (Yes or No)</b>
The proposed land transaction may not qualify for approval under an existing categorical exclusion, or the State F&W agency prefers to use the Generic EA.		
The land transaction is: a) being proposed by a privately owned utility or a third party public agency (not the State F&W agency) for facilities to serve a public need or use rather than to benefit fish and wildlife resources or b) being proposed to correct a land boundary problem with an adjacent public or private landowner.		
The amount of FA land to be exchanged, traded, or sold, or that requires a permanent easement, lease, or license does not exceed three acres for State areas under 300 acres or 1 percent of area for State areas over 300 acres (maximum of 25 acres).		



Generic EA - Abbreviated Review Process Conditions for Use	Site-Specific Status	Complies (Yes or No)
There is no feasible and prudent alternative that would avoid the FA lands and the project plan includes all feasible and prudent measures to minimize the encroachment into and impacts to these State lands.		
The direct and indirect adverse impacts of the proposed action on FA lands would be minor or temporary.		
The proposed land transaction would not impact any major development with a FA interest.		
The land transaction proposal includes a commitment by the applicant to a) provide the State F&W agency with replacement lands of at least equal or greater monetary <b>and</b> fish and wildlife value or b) pay the State a sum sufficient to purchase replacement lands of at least equal or greater monetary value <b>and</b> adequate to ensure that the fish and wildlife values of the lands directly and indirectly impacted by the project are fully replaced.		
The proposed land transaction would not adversely affect any Federally listed, proposed or candidate species, and/or designated or proposed critical habitat.		
The proposed land transaction would not adversely affect any historic or cultural resources.		
The proposed land transaction would have no meaningful impacts to wetlands.		
The proposed land transaction would have no meaningful impacts to floodplains.		

Generic EA - Abbreviated Review Process Conditions for Use	Site-Specific Status	Complies (Yes or No)
The public has been informed by the State of the proposed land transaction and has been provided an opportunity to comment, and substantial public opposition and/or controversy regarding the proposed land transaction does not exist.		

**Note:** If any response in the “Complies” column is “No,” the USFWS should be consulted to determine if compliance could be achieved through further project modification or whether development of a site-specific EA is required.

**State Fish and Wildlife Agency Concurrences/Approvals:**

Project Leader: \_\_\_\_\_ Date: \_\_\_\_\_

Federal Aid Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

**Attachment 2b. Standard Site-specific Review Form** (see Section 2.2.2.10 of Generic EA) - Example of Completed Form

**State:** “Anywhere R3 State”      **State Area (Federal Aid Lands) Affected:** “Anywhere” State Wildlife Area

**Grant or Transaction Number For the Area:** “Anywhere State” FW-4-D

**Name of Proposed Project/Facility:** “Anywhere State” Route xxx Realignment Project

**Transaction Type (check or circle one):**    ☐ Easement    ☐ Lease    ☐ License    ☐ Exchange    ☐ Trade    ☒ Sale

**Compliance of the Proposed Land Transaction with the Generic EA Conditions** (*provide a brief summary of the site-specific status of the proposal and answer yes or no for each of the conditions outlined in the table below*):

Generic EA - Abbreviated Review Process Conditions for Use	Site-Specific Status	Complies (Yes or No)
The proposed land transaction may not qualify for approval under an existing categorical exclusion, or the State F&W agency prefers to use the Generic EA.	Per discussion with USFWS FA staff, the proposed land transaction would not qualify for approval under an existing categorical exclusion.	Yes
The land transaction is: a) being proposed by a privately owned utility or a third party public agency (not the State F&W agency) for facilities to serve a public need or use rather than to benefit fish and wildlife resources or b) being proposed to correct a land boundary problem with an adjacent public or private landowner.	The proposed land transaction is to allow the State DOT to reconstruct a road with some minor alignment changes to meet geometric safety design standards and is not intended to benefit fish and wildlife resources.	Yes
The amount of FA land to be exchanged, traded, or sold, or that requires a permanent easement, lease, or license does not exceed three acres for State areas under 300 acres or 1 percent of area for State areas over 300 acres (maximum of 25 acres).	The proposal is for a 2.5-acre divestiture by sale from a 355-acre State wildlife area.	Yes

Generic EA - Abbreviated Review Process Conditions for Use	Site-Specific Status	Complies (Yes or No)
There is no feasible and prudent alternative that would avoid the FA lands and the project plan includes all feasible and prudent measures to minimize the encroachment into and impacts to these State lands.	Supporting documents are attached showing that no feasible and prudent alternative is available to avoid the FA lands and that all reasonable measures to minimize impacts have been adopted.	Yes
The direct and indirect adverse impacts of the proposed action on FA lands would be minor or temporary.	The proposed land transaction involves only 2.5 acres to be permanently divested and 1.5 acres of temporary construction easement. An additional acre of FA land would have reduced use as the discharge of a firearm would no longer be legal, per State law.	Yes
The proposed land transaction would not impact any major development with a FA interest.	There are no major developments with a FA interest in the vicinity of the proposed project.	Yes
The land transaction proposal includes a commitment by the applicant to a) provide the State F&W agency with replacement lands of at least equal or greater monetary <b>and</b> fish and wildlife value or b) pay the State a sum sufficient to purchase replacement lands of at least equal or greater monetary value <b>and</b> adequate to ensure that the fish and wildlife values of the lands directly and indirectly impacted by the project are fully replaced.	The State lands involved are primarily old field habitat. The proposal includes a commitment from the State DOT to pay the State DNR a sum sufficient to purchase at least 3.5 acres of similar habitat (2.5 acres directly affected and 1 acre on which discharge of a firearm would no longer be legal).	Yes
The proposed land transaction would not adversely affect any Federally listed, proposed or candidate species, and/or designated or proposed critical habitat.	No listed species present (see attached Phase 1 Section 7 Evaluation form dated 4/20/02).	Yes
The proposed land transaction would not adversely affect any historic or cultural resources.	Project cleared by SHPO in Letter dated 4/20/02 (attached) and 40 days have past with no response back from the Tribes.	Yes

Generic EA - Abbreviated Review Process Conditions for Use	Site-Specific Status	Complies (Yes or No)
The proposed land transaction would have no meaningful impacts to wetlands.	Only affected wetlands are narrow strips in roadside ditches - would reestablish in new roadside ditches.	Yes
The proposed land transaction would have no meaningful impacts to floodplains.	There will be no meaningful change to any floodplain areas because of the proposed land transaction.	Yes
The public has been informed by the State of the proposed land transaction and has been provided an opportunity to comment, and substantial public opposition and/or controversy regarding the proposed land transaction does not exist.	During the public review period, 20 written comments and 10 verbal comments were received. Fifteen of the comments were positive and the remainder concerns were resolved through discussions.	Yes

**Note:** If any response in the “Complies” column is “No,” the USFWS should be consulted to determine if compliance could be achieved through further project modification or whether development of a site-specific EA is required.

**State Fish and Wildlife Agency Concurrences/Approvals:**

Project Leader: \_\_\_\_\_ Date: \_\_\_\_\_

Federal Aid Coordinator: \_\_\_\_\_ Date: \_\_\_\_\_

## **Attachment 3**

### **Public Review Procedures by the States**

#### **Illinois**

Through Illinois DNR's Comprehensive Environmental Review Process all the land disturbing projects submitted for Department review are published in the IDNR's "Environmental Reporter". The public receives the Reporter through monthly mailings and it is posted on the Illinois DNR web site at <http://dnr.state.il.us/orep/nrrc/nrrc.htm>. It is the Service's understanding that this process provides a 30 public comment period.

#### **Indiana**

This is the statement Indiana uses:

The Indiana Division of Fish and Wildlife requests public comment as part of any land exchange process. This public comment is used to fulfill requirements of the Section 106 review, provides documentation of public opinion regarding the exchange and satisfies the National Environmental Protection Act requirement to determine if the action will have adverse or controversial effects. Neighboring landowners are contacted directly for State permit approvals.

Public opinion is solicited via certified public notice in local county newspapers, notification of local historical societies and, for significant actions, public meetings. It is the Service's understanding that this process provides a 30 public comment period.

#### **Iowa**

Any land transaction, whether it be a fee title acquisition or a land trade, requires approval by the Iowa Natural Resource Commission. All NRC meetings are open to the public and copies of meeting agendas are provided to media statewide. Public comments can be provided at the meetings or submitted in writing.

Most trades or land dispositions here in Iowa involve the Iowa DOT. The Iowa DOT has a very extensive public review process that involves several local meetings and several opportunities to comment on their EA's and other documents.

#### **Michigan**

Proposed land exchanges go through an extensive internal review within the Michigan DNR by the Land Exchange Review Committee (LERC). After this internal review, proposed exchanges are sent to the Michigan Natural Resource Commission. Any proposed land exchange would be listed in the NRC meeting agenda. During the meeting, the LERC will make a recommendation to the Natural Resource Commission on any proposed land exchange. For proposed land trades involving a Federal Aid interest, action will be deferred until the next NRC meeting, allowing for a minimum of a 30 day public comment period. Public comments will be accepted at the meetings or can be provided in writing.

## **Minnesota**

Minnesota begins their land purchase and exchange projects by working with the public to resolve any issues at an early stage, well before any action commences. After such discussions have occurred and issues are addressed, the MN DNR formally solicits verbal and written comments by publishing a notification of the proposed action in an appropriate local newspaper. Comments are accepted for 30 days after publication.

## **Missouri**

The Missouri Department of Conservation uses a wide variety of public involvement/input techniques and opportunities in both a targeted and general fashion. Public input/involvement includes general and issue driven public meetings, opinion polls, user surveys, telephone surveys, workgroups, and regular contacts with state and local government officials. The Department has an “open door policy” regarding public contact. The public may ask for time at regularly scheduled Conservation Commission meetings or with the Department’s Regulations Committee for rule and regulation related topics. The Department also maintains an official Ombudsman who regularly monitors and responds to e-mail and other correspondence. Public notices are made available via the Department’s website <http://www.conservation.state.mo.us/about/notice>.

When public opposition or controversy materializes, we attempt to resolve issues using any number of techniques to gauge and monitor the extent and seriousness of the public’s feelings, and subsequently employ outreach and information efforts for the purposes of alleviating concerns and building informed consent. If controversy persists, alternatives are considered or employed. It is the Service’s understanding that this process typically provides a 30 public comment period.

## **Ohio**

The types of land exchanges conducted under this Environmental Assessment would most closely follow the procedures utilized by the Ohio DNR for expansion of existing areas. Ohio DNR district personnel would be fully briefed on the planned exchange and a letter would be sent to landowners in the nearby area. A letter would also be sent to township, county, state, and other local public officials informing them of the planned exchange. Comments would be solicited over a 30 day period. After the comment period, a meeting is typically held with the township trustees and, if warranted, with local landowners.

## **Wisconsin**

Public Notice procedures under the Wisconsin Environmental Policy Act for the kind of action described in the generic EA would be a 2 week Notice published in the local Newspaper and also mailed to public buildings (municipal offices, libraries, government offices) in the local area. The Notice explains the project, proposed action and procedures for public comments.